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DAMROSCH TO THE RESCUE

HE THROWS OUT A LIFELINE TO HERBERT'S REPUTATION.

Testifies That There Is a Style as Herbertian as Another Style Is Wagnerian A Few Plain Words for the Wayfaring Man on the Subject of Motif

Walter Damrosch was the star witness vesterday in Victor Herbert's \$50,000 libel suit against the Musical Courier. The defence rested half an hour before court adjourned for the day and Mr. Damrosci was called in rebuttal by the plaintiff. In the thirty minutes during which he was on the stand he swatted the experts for the defence, who had testified that Herbert cribbed from others in composing operas, fortissimo et con modo. He admitted that, in a sense, he was a rival of Herbert's, but he believed in fair play, and he was glad to be able to testify that the compositions of the author of "The Idol's Eve" had an originality that was as distinctly Herbertian as the works of the master of Bayreuth were distinctly Wagnerian. Mr. Damrosch talked very eloquently at times and frequently excited the musicians in the court room to enthusiastic applause, which was promptly and enthusiastically sup-By way of qualifying as an expert, Mr.

Damrosch said that he was 40 years old, that he began to study music when he was 6 years old, under his father, and that he was still studying. In enumerating his music masters, Mr.

Damrosch did not speak of any of them as the greatest this, that or the other musical specialist that ever lived, as has been the habit of most of the other experts in this case. He was careful to avoid technical language as far as possible. When he had qualified as an expert, Arthur C. Palmer, counsel for Mr. Herbert, examined him as follows:

A follows:

Q Mr. Damrosch, what is the difference between motif and motive? A. Motif is a foreign word meaning the idea, the theme, the impulse which animated the composer when he made his composition. Motive means the impulse or idea that prompted a given action. There is a distinction between the two words, without a difference worth mentioning.

Q I now show you defendant's exhibits entitled "Grace O'More," a song by Witt, and the "Serenade by Victor Herbert, and ask you wherein they are similar or alike. A [Smiling] Both are waltzes.

Q But a great number of great experts have testified here that the motif in each was the same. A. [Smiling broadly] And I so testify. Both Witt and Herbert had the idea, impulse, motif to write a waltz. One wrote "Grace O'More," the other the "Serenade." [Laughter] Waltz time is waltz time. Why shouldn't the tempo be the same? As for certain notes being identical, that is nothing. The same thing will be found in many couples of waltz composition. There are certain limitations in the making of waltzes beyond which even the most original cannot go.

Q Is there anything peculiarly his own

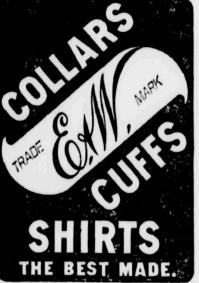
beyond which even the most original cannot go.

O Is there anything peculiarly his own in Herbert's work? A Most assuredly there is Among musicians Mr. Herbert's work is regarded as peculiarly Herbertlan, as Wagner's is Wagnerian. There is a great deal of originality in it.

Q And you so testify although you are rival of Herbert's? [The witness's facial expression hardens perceptibly] A. In a sense. We are both musicians. [Suppressed laughter.] He has an orchestra and I have an orchestra.

a rival of Herbert's? [The witness's facility although you are accessed by the post of the part of the

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will find the same resemblances, and they reflect not in the slightest degree on the greatness or originality of the author. [Spontaneous applause nipped in the bud] When court opened yesterday that explosive and elderly Italian conductor Signor August Vianesi, who testified on Thursday that there was not an opera house in all Europe that didn't know him, was recalled by the defence. The signor had two special difficulties on Thursday. One was that he couldn't satisfactorfly explain without a piano in court the extent to which Victor Herbert had cribbed from others. The other was that he couldn't make the lawyers understand what he was talking about when he used the word rhythm.

rhythm.

Over night he had made preparation to overcome both difficulties. Since he couldn't have a piano in court, he had copied passages of Herbert's works and underneath on the same sheet he had copied the passages which, he alleged, Herbert had cribbed from. By this chart had cribbed from a great plant of the work of the passages which a great plant of the work of the passages which a great plant of the work of the passages which a great plant of the passages which a plant of the passages which a great plant of the passages which a plant of the passages which a plant of the passages of the passa

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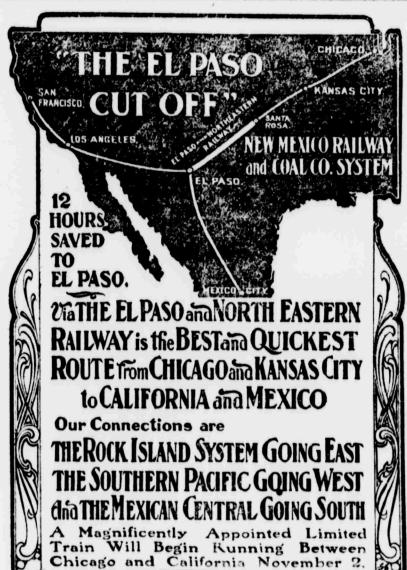
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authorities, who said they wanted him for shooting at and wounding a man there a year ago. The detectives had a bench warrant for the soldier.

Sybiliski served for several months in the Philippines, then obtained an honorable discharge and went to his home in Buffalo to support his recently widowed mather. While there, according to his own story, he was set upon one night by men whom he took to be thieves and shot one of them in the leg. The Buffalo side of the case is that he shot a man who laughed at the ex-soldier when the latter fell from a bicycle.

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